

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOHN GARRETT SMITH,

Plaintiff,

v.

SANDRA ALDRIDGE, *et al.*,

Defendants.

CASE NO. 3:19-cv-05600-RBL-JRC

ORDER ON PLAINTIFF'S  
MOTION TO RECUSE

This matter under 42 U.S.C. § 1983 has been referred to the undersigned as authorized by 28 U.S.C. § 636(b). *See* Dkt. 64. The matter is before the Court on plaintiff's "MOTION for JRC to be Immediately Removed for the Bench," which the Court interprets as a motion for recusal. *See* Dkt. 74. For the reasons stated herein, the undersigned declines to recuse himself and directs this motion to be set on the Chief Judge's calendar for consideration.

**BACKGROUND**

This matter was referred to the undersigned on May 4, 2020, after the previously assigned magistrate judge recused himself based on a potential conflict of interest. *See* Dkt. 64. By that

1 time, the Court had entered a pretrial scheduling order setting discovery and dispositive  
2 deadlines and certain defendants had filed a summary judgment motion that is currently ripe for  
3 decision. *See* Dkt. 43. Plaintiff has also filed a number of pending motions. *See* Dkts. 55, 56,  
4 65, 66, 72. The Court has yet to rule on any motion or issue a report and recommendation in this  
5 matter.

6 Plaintiff appears to seek recusal primarily because the undersigned issued a report and  
7 recommendation that plaintiff did not like. *See* Dkt. 74, at 2. Plaintiff also states that he has  
8 filed a lawsuit against the undersigned in state court—apparently, a lawsuit in which he has also  
9 named a number of other federal judges in this District as defendants. *See* Dkt. 74, at 2.

#### 10 DISCUSSION

11 The Court’s local rules provide for the following procedure when a motion to recuse is  
12 filed:

13 Whenever a motion to recuse directed at a judge of this court is filed pursuant to 28  
14 U.S.C. § 144 or 28 U.S.C. § 455, the challenged judge will review the motion  
15 papers and decide whether to recuse voluntarily. If the challenged judge decides  
16 not to voluntarily recuse, he or she will direct the clerk to refer the motion to the  
chief judge, or the chief judge’s designee. If the motion is directed at the chief  
judge, or if the chief judge or the chief judge’s designee is unavailable, the clerk  
shall refer it to the active judge with the highest seniority.

17 Local Civil Rule 3(f).

18 The undersigned has reviewed the applicable judicial policies and rules and declines to  
19 voluntary recuse himself for the reasons discussed herein.

20 A judge shall recuse himself or herself if “a reasonable person with knowledge of all the  
21 facts would conclude that the judge’s impartiality might reasonably be questioned”—a test that  
22 requires recusal if there is the appearance of bias. *Yagman v. Republic Ins.*, 987 F.2d 622, 626  
23 (9th Cir. 1993); 28 U.S.C. § 455. Disqualification is warranted if “a reasonable person with  
24

1 knowledge of all the facts would conclude that the judge’s impartiality might reasonably be  
 2 questioned.” *United States v. Holland*, 519 F.3d 909, 913 (9th Cir. 2008). A judge’s alleged  
 3 bias, prejudice, or partiality must be based on knowledge derived from a source outside of any  
 4 judicial proceedings—some factor other than what the judge learned from his or her participation  
 5 in the case. *Liteky v. United States*, 510 U.S. 540, 554 (1994). Prior judicial rulings alone  
 6 almost never constitute a valid basis for a bias or partiality motion. *Liteky*, 510 U.S. at 555.

7 First, recusal is not appropriate on the basis of the litigation that plaintiff claims to be  
 8 bringing in state court against a number of judges in this district, including the undersigned. The  
 9 undersigned has consulted the Judicial Conference’s Guide to Judiciary Policy and finds that in  
 10 fact, the Committee on Codes of Conduct has advised against recusal in such a situation:

11 Important reasons exist for a judge not to disqualify routinely, as this would permit  
 12 and might even encourage litigants to manipulate and abuse the judicial process,  
 13 which could undermine public confidence in the integrity of the judiciary. Automatic disqualification of a judge cannot be obtained by the simple act of suing  
 14 the judge, particularly where the suit is primarily based on the judge’s prior judicial  
 15 rulings.

16 . . . .

17 A litigant with a case pending before a judge may respond to an adverse  
 18 ruling by initiating a complaint against the judge. . . .

19 A judge is not automatically disqualified from participating in other,  
 20 unrelated cases involving the same litigant, whether they are filed before or after  
 21 the complaint in which the judge is a defendant. Judicial immunity usually will be  
 22 a complete defense against a new complaint of this nature, and the court in which  
 23 the complaint is filed likely will dismiss it as frivolous. In such circumstances, the  
 24 mere fact that a litigant has filed a new frivolous complaint against a judge based  
 on the judge’s official actions will not disqualify the judge from continuing to  
 preside over the earlier, unrelated matter brought by the same litigant. The same  
 holds true when a litigant who previously filed a complaint naming a judge  
 subsequently files an unrelated case against others that is assigned to the named  
 judge.

Although there might be some question regarding the impartiality of the judge in  
 these situations, [Judicial] Canon 3C(1) requires that the basis for questioning a  
 judge’s impartiality must be “reasonable” for the judge to be required to recuse.  
 The factors the judge should consider in making the reasonableness determination  
 are identified above, i.e., the nature of the complaint, the applicable law, and other  
 relevant circumstances. A complaint filed against a judge that is subject to prompt

1 dismissal on judicial immunity grounds will not ordinarily give rise to a reasonable  
2 basis to question the judge's impartiality in unrelated cases filed against others by  
3 the same litigant. Such a nonmeritorious complaint, standing alone, will not lead  
4 reasonable minds to conclude that the judge is biased against the litigant or that the  
5 judge's impartiality can reasonably be questioned, and thus will not require the  
6 judge to recuse.

7 "Committee on Codes of Conduct Advisory Opinion No. 103: Disqualification Based on Harassing  
8 Claims Against Judge," *Guide to Judiciary Policy, Vol. 2B, Ch. 2*, at 187–89.<sup>1</sup>

9 In light of what appears to be an attempt by plaintiff to have the undersigned disqualified  
10 from hearing plaintiff's cases in this Court by filing state court litigation claiming obstruction of  
11 justice, the undersigned concludes that the nature of the state court proceeding and all relevant  
12 circumstances counsel against recusal.

13 Plaintiff also seeks recusal based on the undersigned's report and recommendation in one  
14 of plaintiff's previously filed cases in this Court. *See* Dkt. 42, *Smith v. Haynes*, 3:19-cv-0394-  
15 RBL. However, the undersigned is aware of no requirement that a judge must recuse himself  
16 from handling multiple cases filed by the same litigant or where a litigant is dissatisfied with an  
17 adverse ruling in another matter. Plaintiff points to no indication of extrajudicial bias when the  
18 undersigned entered the report and recommendation in *Smith v. Haynes*. A reasonable observer  
19 would not conclude that such calls into question this Court's ability to be impartial in the  
20 pending matter.

21 For these reasons, the undersigned declines to voluntarily recuse himself in this matter.

## 22 CONCLUSION

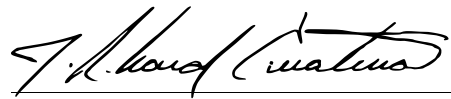
23 The undersigned will not voluntarily recuse himself from this matter. Plaintiff's motion  
24 (Dkt. 74) shall be referred to the Chief Judge in accordance with LCR 3(f) for a determination as

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<sup>1</sup> Available at <https://www.uscourts.gov/rules-policies/judiciary-policies/ethics-policies>.

1 to its merits. This action is stayed pending resolution of the recusal issue. No further motions  
2 shall be filed in this matter until the stay is lifted. **Any motion filed while the matter is stayed**  
3 **shall not be considered and shall be dismissed.** The Clerk is direct to send a copy of this order  
4 to petitioner.

5 Dated this 20th day of May, 2020.

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9 J. Richard Creatura  
10 United States Magistrate Judge  
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